



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

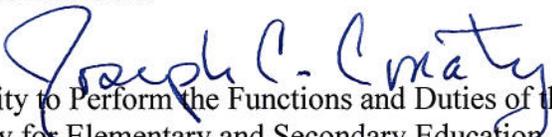
THE ASSISTANT SECRETARY

MEMORANDUM

DATE: JUL 06 2009

TO: Bridget Dooling/Sharon Mar
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Kathy Axt
Regulatory Information Management Services
U.S. Department of Education

FROM: Joseph C. Conaty 
Delegated Authority to Perform the Functions and Duties of the
Assistant Secretary for Elementary and Secondary Education

SUBJECT: Emergency Clearance of Information Collection Requests for Title I, Part A
Waivers

The U.S. Department of Education (ED) plans to issue guidance inviting requests for waivers of certain statutory and regulatory requirements under Title I, Part A of the Elementary and Secondary Education Act (ESEA). The guidance includes information collection activities required by the ESEA in order for ED to grant the requested waivers. The potential waivers fall into three categories: (1) waivers related to certain Title I, Part A requirements as they apply to Title I, Part A funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA); (2) waivers of certain Title I, Part A statutory and regulatory requirements related to public school choice and supplemental educational services (SES); and (3) waivers of the maintenance of effort requirements in sections 1120A(a) and 9521 of the ESEA. ED will grant waivers under the authority in sections 9401 and 9521 of the ESEA and waiver requests must comply with the requirements in those provisions, to the extent applicable. Certain information must be submitted to ED with a waiver request, as required under section 9401 of the ESEA. ED is requesting that the Office of Management and Budget (OMB) clear these information requests on an emergency basis, **by July 13, 2009.**

**Emergency Clearance of Information Collection Requests for Title I, Part A ARRA
Waivers**

ED will consider waivers of certain statutory requirements that relate to the use of Title I, Part A funds made available under the ARRA. The ARRA, signed into law by the President on February 17, 2009, provides \$10 billion in new funding for programs under Title I, Part A of the

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ESEA. These ARRA funds provide assistance to local educational agencies (LEAs) and schools that have high concentrations of students from families that live in poverty in order to help improve teaching and learning for students most at risk of failing to meet State standards. The ARRA funds are in addition to the \$14.5 billion in Title I, Part A funds Congress provided under Public Law 111-8, the Department of Education Appropriations Act, 2009 (the regular fiscal year (FY) 2009 appropriation).

Under section 9401 of the ESEA, a State educational agency (SEA), LEA, Indian tribe, or school (through its LEA) may apply for a waiver of any statutory or regulatory requirement in Title I, Part A, except as specified in section 9401(c) of the ESEA. Given the significant influx of Title I, Part A funds under the ARRA, ED will consider, in particular, waiving the following requirements with respect to Title I, Part A ARRA funds:

- (a) A school in improvement's responsibility to spend 10 percent of its Title I funds on professional development (section 1116(b)(3)(A)(iii));
- (b) An LEA in improvement's responsibility to spend 10 percent of its Title I, Part A, Subpart 2 allocation on professional development (section 1116(c)(7)(A)(iii));
- (c) An LEA's obligation to spend an amount equal to 20 percent of its Title I, Part A, Subpart 2 allocation on transportation for public school choice and on supplemental educational services (SES) (section 1116(b)(10));
- (d) An LEA's responsibility to calculate the per pupil amount (PPA) for SES based on an LEA's FY 2009 Title I, Part A, Subpart 2 allocation (section 1116(e)(6)); and
- (e) The prohibition on an SEA's ability to grant to its LEAs waivers of the carryover limitation more than once every three years (section 1127(b)).

ED released guidance on Title I, Part A ARRA funds on April 1, 2009. In this guidance, ED indicated that it would provide additional information to SEAs and LEAs about how to obtain waivers. (We have already received questions from SEAs and LEAs about the waiver process.) The waiver guidance ED plans to issue provides the additional information noted in the April 1 Title I, Part A ARRA guidance, answers subsequent questions from SEAs and LEAs, and describes the process for SEAs to apply for the waivers and for LEAs to implement the waivers. To provide this guidance in a timely manner, ED needs emergency clearance.

Emergency Clearance of Information Collection Requests for Waivers of Certain Title I, Part A regulatory provisions

On April 1, 2009, the Secretary sent a letter to all Chief State School Officers discussing the Title I regulations that were issued in October 2008. The Secretary indicates in that letter that he will consider, in accordance with his authority under section 9401 of the ESEA, requests for waivers of certain Title I regulatory provisions related to public school choice and SES, including one provision issued in October 2008 and one provision that has been in effect since 2002. In addition, although not discussed in that letter, the Secretary will consider requests for waivers related to an additional requirement governing the implementation of SES.

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The Secretary intends to propose for public comment in a notice of proposed rulemaking (NPRM) a repeal of the provision that prohibits a State from approving as an SES provider a school or a district identified for improvement, corrective action, or restructuring (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)). Because it will take some time to conduct the rulemaking process, the Secretary will consider a request to waive this requirement for school year (SY) 2009-10. Such a waiver would allow a State to approve as an SES provider a district or school in improvement, corrective action, or restructuring, although the school or district would still have to meet all of the State's requirements to be approved as a provider. The Secretary will also consider a request for a one-year waiver of the requirement in 34 C.F.R. § 200.37(b)(4)(iv) to provide notice of public school choice at least 14 days before the start of the school year if districts cannot comply with this requirement because of their State's current assessment timeline or contract with its assessment vendor. In addition, the Secretary will consider requests for waivers that would allow an LEA to provide SES to eligible students attending schools in the first year of improvement and to count the funds spent on providing SES to those students toward the LEA's 20 percent obligation. Such a waiver would waive the provisions in section 1116(b)(10) of the ESEA and 34 C.F.R. § 200.48 that limit the funds spent on SES that an LEA may count toward its 20 percent obligation to funds spent providing SES to eligible students attending schools in the second year of improvement, in corrective action, or in restructuring.

Emergency Clearance of Information Collections for Requests for Waivers of Maintenance of Effort Requirements

Under sections 1120A(a) and 9521 of the ESEA, an LEA may receive funds under Title I, Part A for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year were not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year. Section 9521(c) of the ESEA gives the Secretary the authority to waive the MOE requirements if an LEA experiences an exceptional or uncontrollable circumstance or experiences a precipitous decline in its financial resources. Under section 9521 of the ESEA, an SEA on behalf of an LEA, or an LEA itself, may apply for a one-year waiver of the maintenance of effort (MOE) requirements.

In the April 1, 2009 Title I, Part A ARRA guidance, ED noted that it would consider waivers of the maintenance of effort requirements. We have also received questions from SEAs and LEAs about the MOE waiver process. In order to determine whether an LEA's situation meets the grounds in the ESEA for approving an MOE waiver, ED needs to obtain certain information, which involves information collection activities. The waiver guidance ED plans to issue provides detailed information on obtaining MOE waiver, including the process for SEAs to apply for the waivers on behalf of their LEAs, and addresses recent MOE questions from SEAs and LEAs. To provide this guidance in a timely manner, ED needs emergency clearance.

Emergency Request

As noted above, the Department is requesting that the Office of Management and Budget (OMB) clear this information request on an emergency basis by July 13, 2009. The

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following paragraphs explain why emergency approval is crucial to SEAs and LEAs and the students they serve with Title I, Part A funds.

With respect to the Title I, Part A ARRA funds, LEAs are already working with their SEAs to plan Title I, Part A activities for next year. Planning for a Title I, Part A program typically occurs in the spring and summer prior to the next school year. Consequently, SEAs and LEAs cannot wait until right before the school year starts to know how to obtain waivers from ED. This is why OMB approval on an emergency basis is so important. Such approval would enable ED to provide SEAs and LEAs with timely information about how to request waivers of certain Title I, Part A requirements--information that will be necessary as SEAs and LEAs make crucial decisions about how they will most effectively use Title I, Part A funds, including those available under the ARRA, during summer 2009 and in SY 2009-10. If emergency clearance were not granted, ED would not be able to provide the waiver request information to SEAs and LEAs in time for them to plan effectively. And without proper planning, Title I, Part A services to academically at-risk students, including those supported by the ARRA, would suffer.

Similarly, now that States have received the Secretary's letter regarding the Title I regulations, they need to know as soon as possible how to request a waiver and what information will be required to accompany that request. The Secretary's letter indicates that ED will provide additional information about the process for submitting a waiver request. This process must begin at this time in order for States and LEAs to plan for their implementation of the public school choice notice for SY 2009-10. In addition, if a school or district identified for improvement, corrective action, or restructuring is going to be approved to be an SES provider for SY 2009-10, a waiver must be requested and granted before the State completes its process for approving SES providers, or with sufficient time for the State to reopen that process, if it chooses to do so. Likewise, the process for requesting waivers related to the provision of SES to eligible students attending Title I schools in the first year of improvement must begin at this time in order for LEAs to have sufficient time to appropriately plan their implementation of SES. In all three cases, without emergency approval of the Title I, Part A waiver guidance, States and LEAs will not be able to take advantage of the flexibility the Secretary is offering regarding these provisions for the upcoming school year because ED would not be able to provide information regarding how to apply for a waiver until it is too late.

Concerning MOE, due to the state of the economy during SY 2008-09, ED expects many more LEAs to have experienced a precipitous decline in their financial resources or an exceptional or uncontrollable circumstance than in prior years, causing them to miss maintaining effort and in turn to seek an MOE waiver from ED. Given these circumstances, the planned waiver guidance specifies the process States may use to obtain MOE waivers from ED for their LEAs. In order for this process to begin as soon as possible and operate efficiently, ED needs emergency approval of the information collection activities in the guidance associated with MOE waivers.

Thank you for your prompt consideration of this request. If you have questions, please contact Todd Stephenson of my staff at (202) 205-1645 or todd.stephenson@ed.gov.

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